Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1811

JOHN DOE, et al.,
Petitioners,

-vs-

CATHY E. IRWIN, et al.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners, JOHN DOE, JANE DOE, THOMAS M. GROST and CORA W. GROST, individually and on behalf of all others similarly situated, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on February 26, 1980.

OPINIONS BELOW

The Opinion of the Court of Appeals, not yet reported, is set forth in Appendix A hereto. That Opinion reversed Judgments of the District Court of the Western District of Michigan reported at 428 F. Supp. 1198 (W.D. Mich. 1977) and at 441 F. Supp. 1247 (1977).

JURISDICTION

The Judgment of the Court of Appeals for the Sixth Circuit was entered on February 26, 1980. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

In this action parents of minor unemancipated children sought injunctive relief against a county public health clinic program providing contraceptives to minors in conjunction with an educational "rap session". The clinic requires minors to attend this "rap session" as a prerequisite to receipt of contraceptives. The religious attitudes and values of parents and minors towards premarital sex and the use of contraceptives, the morality of the lifestyle of sexually active unmarried teenagers and their scruples about such matters as derived from their family are examined and evaluated by respondent state public officials and discussed with minor children at rap sessions. Those sessions are

designed to influence immature minor children to use hazardous prescriptive contraceptive drugs contrary to the religious beliefs of parents and their children. Under clinic guidelines, parents are not notified that their minor children attend these sessions nor that dangerous prescriptive drug contraceptives are provided to them by the public health clinic. The questions presented therefore are:

1. Whether the public clinic's educational program evaluating the religious and moral beliefs of parents and their minor children in order to affect the minor's attitude toward the use of contraceptives violates fundamental rights under the Religion Clauses of the First Amendment and the familial privacy rights protected by the Ninth Amendment?

2. Whether the public clinic's provision of contraceptives of any type to minors not determined to be mature or capable of informed consent, without notice or consultation with their parents, violates the fundamental rights of parents to the care, custody and nurture of their children and their right, as parents, to inculcate in their own children moral standards, religious beliefs and elements of good citizenship as protected by the First and Fourteenth Amendment?

3. Whether the public clinic's provision of hazardous, prescriptive birth control drugs to minors without notice or consultation with their parents violates the fundamental rights of parents to the care, custody and nurture of their children protected by the Fourteenth Amendment?

4. Whether the limiting of birth control devices and medications by the public clinic to those minors only who consent to attend a clinic educational session in which respondent state officials and their agents examine and evaluate the religious and moral beliefs of parents and their minor children towards engaging in premarital sexual intercourse by minors and the use of

dangerous contraceptive drugs by their minor children without the knowledge of the parents violates fundamental Fourteenth Amendment Equal Protection and Free Exercise First Amendment rights of parents and their minor children?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the Religion Clauses of the First Amendment and the Ninth Amendment, as set forth in Appendix B.

STATEMENT OF THE CASE

(References are to Record below unless Appendix is indicated)

Without notice to her parents, Plaintiff's 16 year old unemancipated daughter was provided contraceptives, including dangerous prescriptive, contraceptive drugs without the advice or consent of a physician, after attending an educational session provided by the Ingham County (Michigan) public health clinic. This "rap session" examined and evaluated the religious beliefs and attitudes of parents and minor children concerning a minor's participation in sexual intercourse before marriage and her use of contraceptives. (Stip. 3,10,20, pp. 74-76) In the class action suit subsequently brought by Plaintiff parents founding jurisdiction under 42 USC §1983 and seeking injunctive relief against continuation of the program without parental participation, the complaint named as defendants county public health board members and clinic staff personnel in their official capacities. (Complaint p. 1-6)

On March 7, 1977, the District Court issued a permanent injunction ordering the defendants and those acting under them to stop providing contraceptives to minors without notice to their parents granting them a reasonable

opportunity to consult with their children. *Doe* v *Irwin*, 428 F. Supp. 1198 (W.D. Mich 1977) On remand of Defendants' appeal to the Sixth Circuit Court of Appeals for consideration of *Carey* v *Population Services, International*, 431 US 678 (1977), the District Court re-affirmed the previous injunctive order. 441 F. Supp 1247 (1977) The Court of Appeals' decision filed on February 26, 1980, reversed the District Court Judgment with direction to dismiss the complaint.

Most facts concerning the operation of defendant public health clinic were stipulated or undisputed. It is undisputed that unemancipated minors of any age are provided contraceptives by the clinic. (App. 1a; App. 25a) No determination is made or required of the minor's maturity. (App. 22a; App. 25a,) The clinic requires every minor provided contraceptives to participate in a 2-1/2 hour educational session (known as a "rap session"). The rap session is a group dynamics discussion led by a specially trained social worker and assisted by medical and social work students. (94,139) While this session covers the subjects of birth control and human reproduction broadly, no dispute exists that the state clinic personnel purposely examine and evaluate religious beliefs and attitudes of parents and their minor children towards their children's sexual activity and their use of contraceptives. (App. 18a,19a) The morality of the life style of unmarried teenagers engaging in sexual activity and their value systems are discussed. (App. 21a) The social worker does deal with the question of those teenagers who, from family background, have scruples about being sexually active and are looking for counsel as to how to resolve these problems. (App. 21a)

While the clinic asserts that parental participation in the clinic program is welcome and encouraged and the Court of Appeals so found (Slip Opinion at 13, App. 13a) the record does *not* support this finding. The clinic does not notify parents of the participation of their children, no matter how young, in the value education it provides concerning sexual activity and the use of contraceptives (105) nor does it

notify parents that it is providing dangerous prescriptive drug contraceptives to their unemancipated children. (114) Further, the clinic does not inquire of the minors whether their parents are aware of their attendance at clinic rap sessions or of their use of contraceptives provided by the clinic. (App. 20a) In fact, of course, this very litigation establishes the lengths to which the clinic will go rather than notify parents and facilitate their participation in their children's care and education.

Before receiving contraceptives, female minors are given a physical examination by a nurse. (152) A medical history of the minor is taken from the minor herself. (126) The nurse generally then prescribes the contraceptives unless the *nurse* determines that medical contraindications exist which dictate that the minor be seen by a physician. (152, 153) Physicians do not see every minor and do not often establish physician-patient relationships. (152 App. 24a)* Minors receive the birth control pill as the most popular contraceptive furnished by the clinic. (91) It is now medically recognized that use of birth control drugs present extremely serious physical and mental risks to patients. (154, 281-284, 287, 290, 293, 301, 393-396, 577-581, 607-615, Ps' Ex II, Ds' Ex II, Trial Court Finding of Fact (1), 428 F. Supp. at 1203) The pill is provided minors irrespective of their youth. (App. 22a; App. 25a) Minors between 13 and 17 years were provided contraceptives by the clinic during

* The Court of Appeals stated, "The decision on whether a particular individual will receive contraceptives is made in every case by a physician." (Slip Opinion at 4, App. 4a) The record does *not* support this finding. (App. 24a) The District Court Finding of Fact (4) stated in part: "When the girl arrives at the Center, her medical history is taken and she is then given blood pressure and hematocrit tests and a urinalysis is made. The female teenager then talks with a nurse or para-professional screening person. (Davis deposition p. 43) If the medical history is in order, contraceptive pills are prescribed if requested. At no time does the clinic make a specific determination as to the maturity of the minor (Davis deposition, p. 50), although if it is suspected that the patient is falsifying her medical history she is sent to the social worker or the Center's doctor for further discussion. (Davis deposition, p. 46) The doctor present does not see every patient, nor does he measure the maturity of those patients he does see. (Holtzman deposition, pp. 7, 12 and 14)." 428 F. Supp. at 1204.

1974. (Stip. 18, p. 75) A survey conducted by the clinic indicated that 88% of the minors surveyed lived with their parents, 89% had had intercourse at least once and 10% had been pregnant at some time. (Stip. 19, p. 76)

The Court of Appeals held that since the services renddered by the clinic to minors are entirely voluntary on the part of the minors and since no prohibitions exist against parental participation,

> " . . . we can find no deprivation of the liberty interest of parents in the practice of not notifying them of their children's voluntary decisions to participate in the activities of the Center." (Slip Opinion at 13, App. 13a).

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW SERIOUSLY CONFLICTS WITH AND IMPAIRS THE DECISIONS OF THIS COURT PROTECTING THE RIGHTS OF PARENTS TO THE CARE, CUSTODY AND NURTURE OF THEIR CHILDREN FROM INTRUSION BY THE STATE

This case should be reviewed to save from emasculation the parental and family rights enunciated in this Court's decisions of *Meyer, Pierce, Prince* and *Yoder*. The decision below is a travesty of those pre-eminent precedents.

The Court of Appeals denied parents any right to notice of what the state was doing in examining and evaluating the religious beliefs and attitudes of the parents and their minor children and in providing dangerous, prescriptive contraceptive drugs to their minor children. The Court of Appeals concluded, nevertheless, in classic *1984* "doublethink":

> "The Plaintiffs (parents) remain free to exercise their traditional care, custody and control over their unemancipated children." (Slip Opinion at 13, App 13a)

How the parents are to carry on that high calling remains a mystery when they are kept from knowing of the state's clandestine activities. At least Plaintiffs' Doe were fortunate to learn of the state's secret provision of these dangerous drugs and value education to their 16 year old daughter. What of those parents who are left in the dark and have a child suffering from a blood clot or other serious side effects of the dangerous prescriptive contraceptive drugs? The Trial Court found this a grave source of concern. 428 F. Supp. at 1203; 441 F. Supp. at 1252. The Court of Appeals did not so much as mention it. The Court of Appeals' observation that parents "remain free to exercise their traditional care" will provide small comfort to those parents who never find out that dangerous state-provided drugs are the cause of their daughter's illness and yet must provide the medical care, perhaps the incorrect medical care, to attempt to cure her.

The Court of Appeal's decision duly acknowledges this Court's authoritative precedents upholding the rights of parents "to the care, custody and nurture of their children as a liberty interest protected by the Fourteenth Amendment". (Slip Opinion, p. 9, (App 9a, 10a). The Opinion even quotes from *Wisconsin* v *Yoder*, 406 U.S. at 232, 233 (1972) that such parental rights " '. . . must be read to include the inculcation of moral standards, religious beliefs and elements of good citizenship.' " (*Ibid*, p. 10, App 10a)

But the Opinion is a mere parody for, notwithstanding such recitals, the Court goes on to render such parental rights empty formalities. The Court declines to follow those decisions. The truth of the surreptitious state subversion of their young children is still to be kept from the parents. While paying homage to parental rights, the Opinion deletes reference to the fact that the County clinic's "rap session" deliberately examines and evaluates the religious beliefs and attitudes of the parents and the religious convictions of attending minors regarding premarital sexual activity by the minors and the propriety of their use of contraceptives.

(App. 18a, 19a) The Clinic Director, Ms. Davis for example, testified:

> "Q. Is there any discussion at these rap sessions regarding the morality, either from a point of view of general code of conduct or religiously based ethics of sexual activity by unmarried teenagers?
>
> A. I think they discuss their feelings, which involve a lot of the kinds of things you're talking about, their responsibility and the whole picture. I mean, the purpose of the rap session is to make them aware of these kinds of things.
>
> Q. The answer is, yes, they do—there is discussion of the morality of the life style that is involved with teenage sexuality?
>
> A. Their value systems, their responsibilities, if they are going to undertake this kind of decision, their feelings about it and so on. So there is a whole range of values being discussed here." (Record below p. 116. See Appendix C, generally)

The Trial Court found in footnote 3 at p. 1204 of 428 F. Supp:

> "3. A 'rap session' is intended to be an educational process and a part of the upbringing of a child, and is within the vital concern of the parents in the education of their children. See *Wisconsin* v *Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972)."

The Trial Court found the religious beliefs and rights of privacy of the parents implicated by the state's actions. It found that "the Center is not confining itself solely to the furnishings of sex education and birth control information. The findings of fact and the record indicate that the Center . . . inquires into the sexual mores of the children and their relations with their parents . . . ." 441 F. Supp 1251. By ignoring the existence of this invasion into family

affairs the Court of Appeals avoids the heavier burden of justifying such intrusion when "the interest of parenthood are combined with a free exercise claim . . ." *Wisconsin* v *Yoder*, 406 U.S. 205 (1972). Parental rights to inculcate religious and moral values should not be so cavalierly dismissed.

Blotted out of the Court of Appeals' discussion was the central issue contained in the Trial Court's Findings of Fact that "the most widely used birth control device, 'the pill', is fraught with risks" for minor users. 428 F. Supp. at 1203 (See Record below pp. 154,281-284,287,290,301,393-396,576-581,606-613. Joint Exhibit II). The Court of Appeals allows the state to continue to provide these dangerous prescriptive contraceptive drugs to children without notifying their parents *and the Court's Opinion never mentions the drugs' grave medical and psychological risks.*

The admission that minors as young as 13 participated and were furnished these dangerous, prescriptive contraceptive drugs without parental notice or participation was not acknowledged by the Court of Appeals. (Stipulation 18, p. 74, Record below, 428 F. Supp. 1202). Further, the Appeal Court's Opinion—in opposition to the Trial Court's Finding of Fact (4) 428 F. Supp at 1204—held that "(t)he decision on whether a particular individual will receive contraceptives is made in every case by a physician". (Slip Opinion at 4, App 4a). That this is not true is readily verified by reference to the testimony of the medical director, Dr. Holzman:

> "As far as seeing individual patients, if there are problems that arise and the staff of the clinic feels that it needs my expertise, then I'm available for them, but I do not see every patient that comes through there". (Record below p. 147, See Appendix D, generally)

Obviously, under the very precedents of this Court cited by the Court of Appeals an educational program such as

that conducted at the rap session could not be required by a state against parental objections. *Meyer* v *Nebraska*, 262 U.S. 390 (1923); *Pierce* v *Society of Sisters*, 268 U.S. 510 (1925); *Wisconsin* v *Yoder, supra*. Nor could contraceptives of whatever kind be provided under compulsion to minors or any other citizen. *Griswold* v *Connecticut*, 381 U.S. 479 (1965), at 497. And calculated evaluation of individual citizen's moral and religious scruples about premarital sex and the use of contraceptives can hardly be perceived as a proper area for government involvement. *Engel* v *Vitale*, 370 U.S. 421 (1962).

The apparent position of the Court of Appeals, however, is that what the State cannot do by mandate, it can accomplish by artifice. Having given lip service to *Meyer, Pierce, Prince* and *Yoder*, the Court set them, and the fundamental rights they stand for, abruptly aside on the basis that the program presented by the State here was "voluntary", i.e. minors as young as 13 "voluntarily" participated in them. Accordingly, the Court held, the State was free to do whatever it chose with the minors without notification or participation of their parents. The Court's position cannot be premised on any notion that the minors are mature and capable of informed consent. In fact, maturity is not required or determined by the clinic. (App. 22a, App. 25a, 26a) And the Court of Appeals did not consider maturity in any event. Where is the end to a proposition that allows immature, unemancipated 13 year olds to waive "voluntarily" fundamental rights of the family rooted in the "traditions and [collective] conscience of our people?" *Snyder* v *Massachusetts*, 291 U.S. 97, 105 (1933). If parents still are vested with the right to inculcate "moral standards, religious beliefs and elements of good citizenship" recognized by *Yoder, supra*, then surely the state cannot establish a program with the parents' children to evaluate those moral standards and religious beliefs and hold out to 13 year olds dangerous, prescriptive contraceptive drugs as a prize for attendance.

The Trial Court refused to adopt the transparency of the "voluntary" waiving of parental rights relied upon by the Court of Appeals.

The Trial Court held the state's program to be a "constructive taking" of parents' rights because "parental privacy and religious beliefs are implicated" and the decisions being made by possibly immature minors lie "within the sphere of decisions which parents are uniquely qualified to evaluate . . . and to provide the necessary guidance . . ." The Court stated further:

> "Finally, and most importantly, the actions are carried out in an atmosphere of secrecy which fails to put parents on notice as to the state's actions relative to their children and has the practical result of depriving parents of alternatives to counteract such actions, if they so desire." 441 F. Supp 1253.

Thus, the very principles so strongly defended in *Meyer, Pierce, Prince* and *Yoder* are adroitly undone and ". . . the private realm of family life which the state cannot enter", *Prince* v *Massachusetts*, 321 U.S. 158 at 166 (1944) is clandestinely invaded—indeed rendered vacant—without giving the parents the opportunity even to defend what they hold most sacred. Nothing in *Meyer, Pierce, Prince* or *Yoder* permits the state this intrusion upon the family. This interpretation by the Court of Appeals, if unrepaired by this Court's review, will leave the family without protection against unannounced state programs redesigning their children's lives. The enlightened society elite social planners envision is morally abhorrent to many parents. This state invasion of family life is not consonant with principles enunciated by this Court concerning "a society constitutionally committed to the ideal of individual liberty and freedom of choice" *Bellotti* v *Baird*, 99 S. Ct. 3035 at 3045 (1979).

The Trial Court found that the practices of the state here violated the parents' Free Exercise rights. It is surely

a grievious invasion of personal religious freedom for the state to examine and evaluate the religious beliefs of anyone, parent or child. This is so fundamental there is no need to cite authority. Yet the decision of the Court of Appeals is absolutely silent on this issue and nevertheless reverses the Trial Court.

It is not enough to cite leading precedents of fundamental law; they must be followed. The message eminating from the Court of Appeals to other courts in the Sixth Circuit is that the historic decisions of this Court recognizing the primary rights of parents, including their Free Exercise rights, need no longer be followed. This case cries out for relief. If this Court does not hear, where will the parents turn?

II. THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS CONCERNING THE RIGHTS OF PARENTS TO BE INFORMED OF ACTIONS AFFECTING THE HEALTH AND UPBRINGING OF THEIR CHILDREN AND WIDESPREAD DEBATE OF THIS ISSUE REQUIRES THIS COURT'S RESOLUTION OF THE MATTER FOR THE PRESERVATION OF FAMILY RIGHTS

In holding that parents were not entitled to notice of the state's action the Court below recognized that this court had not squarely passed upon the issue. (Slip Opinion at 11, App A). But, in fact, it must be noted that the decisions of this Court have raised speculation whether parents are entitled to notice in any circumstance concerning activities of others, including the state, which affect the welfare and inculcation of values of their minor children. Thus, this Court's decisions in *Bellotti* v *Baird*, —U.S.—, 99 S. Ct. 3035 (1979) *Planned Parenthood of Missouri* v *Danforth*, 428 U.S. 52 (1976), and *Bellotti* v *Baird (Bellotti I)*, 428 U.S. 132 (1976) have opened a Pandora's box feeding doubts and activities presenting grave dangers to parents struggling in their efforts to raise their children in their own cultures and their own beliefs.

Further, the decisions of this Court have left a sense of ambiguity and hiatus concerning when parental authority must be given precedence over state interference, *Parham* v *J.R.*, 99 S. Ct. 2504 (1979) and when parental authority must be superseded, *Bellotti II*, *supra*, at 3050.

Representative of the consternation and confusion are discussions found in J. Holt's *Escape from Childhood* (1974); P. Wald, "Making Sense out of the Rights of Youth", 4 *Human Rights* 13 (1974); K. Kenmoton, "All Our Children", (Carnegie Council on Children, 1977); R. Mnookin, "Children's Rights: Legal and Ethical Dilemmas", *The Transcript*, Summer, 1978 (Boult Hall—Univ. of California at Berkeley); W. Watts, "Parent, Child and the Decision to Abort: A Critique of the Supreme Court's Statutory Proposal in *Bellotti* v *Baird*, 52 *So. Cal. L. Rev.* 1869 (Sept. 1979); Caplow, "The Loco Parent: Policy and Family Life", 1976 *B.Y.U.L. Rev.* 709; "Parental Consent Requirement and Privacy Rights of Minors: The Contraceptive Controversy", 88 *Harv. L. Rev.* 1001 (1975); Hafen, "Puberty, Privacy and Protection: The Risks of Children's 'Rights' ", 63 *ABA Journal* 1383 (Oct. 1977); Hafen, "Children's Liberation and the New Equalitarianism: Some Reservations About Abandoning Youth to Their 'Rights' ", *B.Y.U.L. Rev.* 604 (1976); "Medical Care for the Child at Risk: On State Supervention of Parental Autonomy", J. Goldstein, 86 *Yale L. Journal*, 645 (1977).

That the questions raised in this case are under significant debate across the country is verified by essentially similar litigation at present pending in at least two other federal courts:

> *Tenland, et al* v *Planned Parenthood Association of Cincinnati, Inc., et al*, Civil Case No. 1-78-755, USDC Sd. Ohio, Western Division;
>
> *Frederick Kaneshiro, et al* v *George Yuen, et al*, Civil Case No. 78-0023, USDC, District of Hawaii.

The issue of validity of a state statutory requirement of notification to parents as a prerequisite to a minor's receiving an abortion is at present before this Court. 79-5903, *H L* v *Matheson, Utah* , (Utah Sup. Ct. 12-6-79), prob. juris. noted 2-25-80, Review granted 48 LW 3574. Various members of this Court have characterized the abortion question as unique and therefore distinguishable from contraceptive decisions, *Carey* v *Population Services International*, 431 U.S. 678 (1977), concurring opinions of Powell, Jr. at 705, Stevens, J. at 713, and see dissenting opinion of Rehnquist, J. at 717. Nevertheless, as is obvious from the lower Court's decision here, serious discord exists concerning the rights of parents to be notified of and involved in state action relating to usage of contraceptives by their own children. The review of this case in conjunction with the review of *H L* v *Matheson; supra,* would deter the continued application of abortion criteria to parental right issues in other circumstances. Otherwise parental rights to care and nurture their children may be swept away in the flood of the abortion discussion.

The important constitutional question of parental notice presented in this case, has not been, but should be, settled by this Court. Supreme Court Rule 19.1(b).

For these reasons, this Court should authorize review of this case in order to restore and clarify the respective rights and responsibilities between parents and the state in this area of controversy.

CONCLUSION

For all the foregoing reasons it is respectfully requested that the Court should grant this petition.

Respectfully submitted,

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APPENDIX

No. 78-1056
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN DOE, JANE DOE, THOMAS M. GROST and CORA W. GROST, Individually and on behalf of all others similarly situated,
Plaintiffs-Appellees,

v.

CATHY E. IRWIN, GEORGE GROSS, ELINOR HOLBROOK, GILDA RICHARDSON, MARIE VANDE BUNTE, MARY KAY WICKENS, DAVID HOLDEN and MARY WOODS, in their official capacities,
Defendants-Appellants.

APPEAL from the United States District Court for the Western District of Michigan.

Decided and Filed February 26, 1980.

Before: WEICK and LIVELY, Circuit Judges; and PHILLIPS, Senior Circuit Judge.

LIVELY, Circuit Judge. This case involves the distribution of contraceptives to minors, without notice to their parents, by a publicly operated family planning clinic. The plaintiffs are parents of a 16-year-old daughter who received contraceptives from the clinic and other parents of two teen-age children who live in the area served by it. A class was certified by the district court consisting of "all parents residing in the county of Ingham who have children between the onset of puberty and the age of majority under their parental care, custody and control, and who, as parents, are opposed to having their children receive con-

traceptive information, devices and medication without the knowledge and against the wishes of the parents who comprise this class." The defendants are administrators of the Tri-County Family Planning Center (the Center) and board members and administrators of the Ingham County, Michigan, Health Department.

I.

Many facts concerning the operation of the Center were stipulated. It is operated in Lansing by the Ingham County Health Department under contract with the Michigan Department of Public Health. The original defendants and their successors are responsible for the policies and operations of the Center. The Center serves adults as well as minors. Minors are served without regard to whether or not they are emancipated. Neither the Center nor any of its services related to minors are advertised, and minors are not sought out or encouraged to attend the Center by any of the defendants or any other county official. Minors are permitted to come to the Center either with or without parental consent. Contraceptives are prescribed and distributed to minors both with and without parental knowledge or consent. There is no charge for devices and medication distributed by the Center.

A weekly "rap session" is conducted by the Center. The rap sessions are educational. They deal with birth control methods, the responsibilities of being sexually active and the desirability of communicating with parents and others involved in a decision to engage in sexual activities. No minor is served by the Center until he or she has attended a rap session. Female minors who return to the Center after attending a rap session are required to give a complete medical history and to undergo a physical examination. If any medical problems are indicated, the applicant is referred to her family physician or another physician.

Only if no medical problems are indicated or discovered is a contraceptive device or medication prescribed to a minor.

In the fiscal year immediately prior to the filing of this action the Center distributed contraceptive devices or medication to 623 females who were 17 years old, 466 who were 16, 210 who were 15, and 74 who were 14. According to a study conducted at the Center, 88 percent of the minors surveyed lived with their parents, 89 percent had intercourse at least one time before visting the Center and 10 percent of the female minors had been pregnant at least once. A great majority of those served by the Center receive birth control pills. Though some patients receive inter-uterine devices (IUD), the Center will not insert an IUD in a minor without parental consent. No abortions or sterilizations are performed at the Center.

In her deposition, the program administrator of the Center described the weekly rap sessions in great detail. The sessions are held at the county health office, and each lasts approximately 2-1/2 hours. The sessions are intended to give factual information about birth control and human reproduction. They are conducted by a woman with a master's degree in social work, assisted by medical students and university students majoring in social work. Those attending the sessions are encouraged to ask questions, and the leaders attempt to deal with misinformation about birth control. The pros and cons of various methods of birth control are discussed, including possible side effects. Parents are encouraged to attend if they inquire, but no effort is made to seek their attendance. Those who attend are encouraged to discuss their sexual interests with their parents, and those conducting the sessions offer to help the young people talk with their parents about the subjects covered in the sessions.

Every minor who attends a rap session is required to register and fill out a form. Those who desire to proceed

after the discussions at the rap session must make an appointment at the Center; many who attend the rap sessions never to on to the Center. At the first visit to the Center a personal medical history is taken and a physical examination is conducted. If there are no indications of medical problems, female patients are usually given a three-month supply of birth control pills. If a patient returns for an additional supply, a number of questions are asked to determine whether any symptoms have been noted which indicate side effects. In addition, she is checked physically and certain tests are made. The decision on whether a particular individual will receive contraceptives is made in every case by a physician. Minors are not asked if they have the consent of their parents before contraceptives are given to them, and the Center does not notify parents either that their children have attended a rap session or that they are receiving contraceptives.

The administrator stated that the personnel of the Center do not advocate that unmarried teenagers become sexually active. However, they try to deal with individuals "where they are" and promote their physical and psychological well-being. She described the Center as a "non-judgmental" organization which makes a service available to the community for those people who wish to use it. A physician who is a member of the Department of Gynecology at Michigan State University testified that his department acts as medical director of the Center. The department issues guidelines for personnel of the Center and maintains its quality of medical care. The doctor testified that the physical examinations, which include a check for venereal disease, are extremely thorough. He must personally approve the distribution of contraceptives to a patient where the tests and examinations indicate any "deviation from the normal." Personnel of the Center are directed to make an evaluation of the level of understanding of each patient. This witness concluded that most minors

who come to the Center understand the benefits of contraception versus pregnancy and the hazards of any method of contraception chosen.

Though none of the factual testimony about operations of the Center was disputed, witnesses for the plaintiffs took sharp issue with opinions expressed by the administrator and medical director. One witness, who operates a marriage clinic in Los Angeles, testified to his opinion, based on many years of experience, that adolescents do not have sufficient maturity to utilize contraceptives for the purpose of preventing pregnancy. He further testified that the nonjudgmental approach of the Center is viewed by teenagers as a green light for the use of contraceptives. In addition to stating his belief that programs such as that carried on by the Center do not reduce unwanted pregnancies, this witness stated that family planning clinics contribute to an epidemic in venereal diseases which is known to exist in the United States at the present time. Finally, the witness testified that family stability and trust among family members are undermined by practices of the Center because parents feel that an outsider has usurped their rightful position of authority over their children. This witness had training in sociology and psychology and a Ph.D. degree in communications.

A medical witness for the plaintiffs who engages in family practice testified to having a wide experience with adolescent patients. This physician testified extensively with respect to the physical and psychological risks which he and others associate with the use of various types of contraceptives by adolescent females. It was his opinion that most adolescents do not have the capacity to make decisions on birth control and to understand what is involved in choosing and using a contraceptive. This witness believed that the availability of contraceptives for minors increases promiscuity and the incident of venereal disease.

He testified that the activities of organizations such as the Center would be perceived by teenagers as authority figures "condoning fornication."

The defendants presented a medical witness, certified in pediatrics and public health, who is Professor of Population Planning at the University of Michigan. He testified to his opinion that the use of contraceptives by teenagers reduces pregnancies and that family planning clinics help avert unwanted births. He felt that the distribution of contraceptives to teenagers has very little, if any, effect on the "slight increase" in promiscuity in this country. The witness also stated he had no doubt that a requirement for parental consent would have a negative effect on the access that minors have to a family planning clinic. He detailed the health hazards to teen-age mothers and their babies, and stated there would be many more unwanted babies if teen-age girls were not able to obtain contraceptives without their parents' consent.

II.

The district court found that the Center's practice of distributing contraceptives to minors without notice to their parents violates constitutional rights of the parents. *Doe* v. *Irwin*, 428 F.Supp. 1198 (W.D. Mich. 1977). In the order granting a permanent injunction which accompanied the district court's opinion, the defendants were directed "to cease and desist from distributing contraceptives and contraceptive devices to minor disregard, unemancipated children in the absence of notice to the parents of such children and a reasonable opportunity for the parents of such children to consult with their children as to the decision of the child whether or not to obtain contraceptives or contraceptive devices." The defendants appealed, and this court remanded the case for consideration by the district court in light of *Carey* v. *Population Services Int'l.*, 431 U.S. 678

(1977), which was decided by the Supreme Court after the district court rendered its decision. Following remand the district court found that *Carey* did not require a different result. A second opinion was issued, 441 F.Supp. 1247 (1977), and the previous injunctive order was readopted and reaffirmed. The order was stayed pending appeal.

Though the district court made a number of findings of fact with reference to the testimony of various witnesses, its decision appears to be based primarily upon this conclusion of law:

> [I]n the absence of overriding rights in their minor children and in the absence of compelling State interest, I conclude that parents have a constitutionally protected right to participate in the very important decisions of their minor, unemancipated children as to whether or not to initiate sexual activity or to undertake the substantial medical risks of certain contraceptives. The State, quite simply, in the absence of a compelling interest, may not, by statute, regulation, or action, totally exclude the parents of the child from such a momentous decision. Nor may it supplant the advice, love, understanding, and control of the parent with state-funded and state-controlled physicians, social workers, and counselors. Although the goal of the defendants, acting under color of state law, may be well intended, they are not warranted in insinuating their way into the delicate relationship between parent and child.
>
> 428 F.Supp. at 1209-10.

In its opinion following remand, the district court discussed a number of cases in which the Supreme Court has recognized the right of parents to the "custody, care, and religious and moral education of their children . . . ." 441

F.Supp. at 1249. Consideration of these decisions and various commentaries led the district court to the following conclusion:

> Parental authority is plenary. It prevails over the claims of the state, other outsiders, and the children themselves. There must be some compelling justification for interference.
>
> *Id.*

The district court recognized that the Center does not prohibit parents in any way from inculcating their children with their religious beliefs. However, the court reasoned that "it is an invasion of parental rights to require them to anticipate in advance the multitude of situations which may act upon their children and prepare them in advance to deal with any moral question that may arise in the course of that child's young life, particularly where the parent is prevented from being made aware of the actions of a state-run agency which facilitate a situation inimical to the values the parents are attempting to teach their children." 441 F.Supp. at 1253. The foregoing quotation and other statements in the opinion[1] indicate a finding by the district court that the effect of the Center's practice of not notifying parents is equivalent to the state's supplanting the parents with respect to their children's decisions in regard to sexual activity and birth control.

III.

The parties and *amici curiae* have briefed a number of issues quite thoroughly. Many of these issues will not be discussed in this opinion because they are not necessary to

[1] *E.g.*,"... so long as the defendant Center continues to treat children in a manner whereby the parents of those children *cannot* become aware of the contact ..." 441 F.Supp. at 1253 (emphasis added); "these actions are carried out in an atmosphere of secrecy which fails to put parents on notice as to the state's actions relative to their children ...." *Id.*

a decision. We recognize that three separate sets of rights are involved—those of parents, those of children and those of the State of Michigan, acting through the Center. We will first attempt to identify the rights and the constitutional principles which underlie them before applying these principles to the particular issues in this case.

A.

The constitutional right of persons who desire to use the services of the Center is the right of personal privacy. In a series of cases dealing with laws affecting the right to abortion, the Supreme Court has held consistently that a woman's decisions concerning child-bearing are within the most intimate area of personal privacy. *E.g., Roe* v. *Wade,* 410 U.S. 113, 152 (1973); *Whalen* v. *Roe,* 429 U.S. 589, 599-600 (1977). One of the first explicit recognitions of the right of privacy came in a case dealing with a statute which prohibited the use of contraceptives. *Griswold* v. *Connecticut,* 381 U.S. 479 (1965). Though the state has somewhat broader authority to regulate the conduct of children than that of adults, minors do possess a constitutionally protected right of privacy. *Bellotti* v. *Baird,*—U.S.—, 99 S.Ct. 3035, 3043-44 (1979); *Carey* v. *Population Services Int'l.,* 431 U.S. 678, 692-93 (1977); *Planned Parenthood Of Missouri* v. *Danforth,* 428 U.S. 52, 74-75 (1976); *Wynn* v. *Carey,* 582 F.2d 1375, 1383-84 (7th Cir. 1978) (*Wynn* was re-affirmed and a permanent injunction granted in 599 F.2d 193, 196 (1979)). As with adults, the minor's right of privacy includes the right to obtain contraceptives. *Carey* v. *Population Services, supra.*

B.

The Supreme Court has long recognized the right of parents to the care, custody and nurture of their children as

a liberty interest protected by the Fourteenth Amendment. *See Meyer* v. *Nebraska*, 262 U.S. 390 (1923); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944); *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972); *Parham* v. *J.R.*—U.S.—, 99 S.Ct, 2493, 2504 (1979). The Court has defined and explained the basis of parental rights in various terms:

> The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.
>
> *Pierce* v. *Society of Sisters, supra*, 268 U.S. at 535.
>
> It is a cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. *Pierce* v. *Society of Sisters, supra*. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.
>
> *Prince* v. *Massachusetts, supra*, 321 U.S. at 166.
>
> The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.
>
> * * *
>
> The duty to prepare the child for "additional obligations," referred to by the Court, must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship.
>
> *Wisconsin* v. *Yoder, supra*, 406 U.S. at 232, 233.

C.

Every state has a substantial interest in the health and welfare of all its inhabitants. The Supreme Court has recognized that a state has "an independent interest in the well-being of its youth." *Ginsberg* v. *New York*, 390 U.S. 629, 640 (1968). Michigan's interest in protecting minor females from the physical and emotional hazards of unwanted pregnancies led it to establish clinics such as the Center. This is a legitimate state interest.

IV.

The district court recognized the existence of the three sets of rights. However, it concluded that the state's interest is not "compelling" and that the right of parents to participate in the decisions of their children that involve sexual activity and birth control outweighs the right of minors to make these decisions independently. This conclusion led the court to require the state to impose a limitation on the right of minors which the state had not chosen to impose. We believe this was error.

A.

The Supreme Court has not squarely decided whether a state may impose a requirement of parental notice, as opposed to parental consent, as a condition of a minor's receiving an abortion. *Bellotti* v. *Baird, supra*,—U.S. at—, 99 S.Ct at 3053 n.l (Stevens, J., concurring). However, the Seventh Circuit held unconstitutional an abortion statute that resulted in parental notice in all cases. *Wynn* v. *Carey, supra*, 582 F.2d at 1386-88, and at least one district court has held such a notice requirement unconstitutional. *Women's Community Health Center, Inc* v. *Cohen*, 477 F.Supp. 542, 546-48 (D. Me. 1979). Neither has the Supreme Court determined whether parental notice may be

required before birth control information, devices and medication may be distributed to unemancipated minors. Though this issue was not involved in *Carey* v. *Population Services Int'l., supra,* the district court found support in the opinions of various Justices for its conclusion that such a requirement would be permissible. *Doe* v. *Irwin, supra,* 441 F.Supp. at 1257-60. A three-judge district court in *T-------H.-------*v. *Jones,* 425 F.Supp. 873 (D. Utah 1975), affirmed on statutory grounds only, 425 U.S. 986 (1976), came to a similar conclusion several years before *Carey* was decided. *Id.* at 882.

B.

The district court's conclusion that the Center's practice of distributing contraceptive devices to minors without notifying parents is unconstitutional was based upon the previously noted Supreme Court decisions which define parental rights. The plaintiffs rely on the same authorities on appeal.

There is one fundamental difference between all the cited cases and the present one. In each of the Supreme Court cases the state was either requiring or prohibiting some activity. In *Meyer* v. *Nebraska, supra,* the state forbade the teaching of foreign languages to pupils who had not passed the eighth grade. The Court held the statute not reasonably related to any end within the competency of the state and violative of parents' Fourteenth Amendment right to liberty. In *Pierce* v. *Society of Sisters, supra,* the statute required all children between the ages of 8 and 16 to attend public schools. The Court found that the law unreasonably interfered with the liberty interest of parents to direct the upbringing and education of their children, including the right to send them to accredited private schools. Again in *Wisconsin* v. *Yoder, supra,* the law in question made school attendance compulsory. The Court held that Amish parents'

First Amendment rights to the free exercise of their religion were infringed by the attendance requirement. In *Prince* v. *Massachusetts, supra,* child labor laws were construed to prohibit street sales of religious tracts by children. In that case the Court upheld the conviction of a parent who contended that these laws unreasonably interfered with her right of free exercise of religion and her parental rights. In so holding, the Court determined that a state's "authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience." 321 U.S. at 166.

C.

The State of Michigan, acting through the Center and defendants, has imposed no compulsory requirements or prohibitions which affect rights of the plaintiffs. It has merely established a voluntary birth control clinic. There is no requirement that the children of the plaintiffs avail themselves of the services offered by the Center and no prohibition against the plaintiffs' participating in decisions of their minor children on issues of sexual activity and birth control. The plaintiffs remain free to exercise their traditional care, custody and control over their unemancipated children. Assuming the factual findings (as opposed to assumptions)[2] of the district court are correct, we can find no deprivation of the liberty interest of parents in the practice of not notifying them of their children's voluntary decisions to participate in the activities of the Center.[3]

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[2] In its opinions the district court held that the state may not "totally exclude" the parents from momentous decisions of their children and "supplant" the advice, love, etc. of the parents with state-funded and state-controlled personnel, 428 F.Supp. at 1210. To the extent these statements represent findings of fact by the district court, such findings are clearly erroneous. There was no evidence that parents are excluded from any decisions or supplanted by the activities of the Center. The uncontradicted evidence was that personnel of the Center encourage minors to involve their parents in their decisions concerning sexual activity and birth control, and even offer to help bring the parents into discussions of these subjects.

[3] This is true even though the district court felt that the religious beliefs of plaintiffs are "implicated" in the parents' liberty interest. 441 F.Supp. at 1251. *Cf. Prince* v. *Massachusetts, supra,* 321 U.S. at 166.

We do not find the support for plaintiffs' position which they and the district court perceive in *Carey* v. *Population Service, Int'l., supra*. That case concerned a statute which, *inter alia*, made it a crime to sell or distribute contraceptives of any kind to a minor under sixteen. The Court found this total prohibition to be violative of the privacy right of minors who made the personal decision to use such devices. There was no majority opinion on this particular issue. The various opinions of the Justices do not indicate a belief that parents have a constitutional right to be notified by a public facility which distributes contraceptives to unemancipated minors.

Since we find no unconstitutional interference with the plaintiffs' rights as parents, there is no need to consider whether a "compelling" state interest was involved. For the same reason, it is not necessary to determine whether parental rights "outweigh" those of their minor children.

V.

The question in this case is not whether a state may impose a condition which would limit the right of privacy of the minors whose interests are involved. Rather, it is whether the Constitution requires such a condition. In the absence of a constitutional requirement for notice to parents, it is clearly a matter for the state to determine whether such a requirement is necessary or desirable in achieving the purposes for which the Center was established. There is no basis for a federal court to impose conditions in the absence of an overriding constitutional requirement.

The desire of the parents to know of such activities by their children is understandable. However, the only issue before the district court and this court is whether there is a constitutional obligation on the Center to notify them. The

record before us does not establish that the Center infringes a constitutional right of the plaintiffs by its practice of distributing contraceptive devices and medication to unemanicipated minors without notice to their parents.

The judgment of the district court is reversed with directions to dismiss the complaint. No costs on appeal.

APPENDIX B

UNITED STATES CONSTITUTION:

The First Amendment Religion Classes, provide:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . .

The Fourteenth Amendment, Section 1, provides:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Ninth Amendment provides:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

APPENDIX C

Deposition of Marianne Davis, Program Administrator of the Ingham (Tri-County Michigan) Family Planning Center, taken November 4, 1975, and appearing in the record below of this matter at pages 84 to 141. Excerpts thereof follow:

At page 92 of the Record the witness testified:

(By Plaintiffs' Counsel, Mr. McCormick):

"Q. Okay. Now, with respect to age, does the clinic provide its educational, social and medical services regardless of age?

A. Yes. That's in compliance with the guidelines of H.E.W.

. . .

Q. I wonder if you would at this point explain the rap session aspect of your educational or social program. . . .

In the session, they discuss what is birth control, the human physiology or reproduction, all kinds of factual kinds of things about birth control. They discuss communication with parents. They discuss communication with friends, with each other, with their partner, and they discuss all kinds of misinformation about birth control and any questions that anybody attending would like to have answered.

. . .

Q. So the rap sessions then are really geared more toward the, let's say, attitude or mentality of the younger people?

A. Yes. It's geared to their—where they are.

. . .

Q. What are the youngest that are in attendance—

. . .

A. Well, we would have a wide range, but 14 would be probably the youngest of any grouping. That's where you ask the question. And we wouldn't have a lot of them, I don't think.

Q. What's the typical age?

A. Sixteen and seventeen. Seventeen is the most, and sixteen is the next, and then it drops off from there.

Q. Fewer fifteen year olds?

A. Um-hum.

Q. Even fewer fourteen year olds and even fewer thirteen year olds?

A. Um-hum.

Q. And substantially no twelve year olds?

A. No. I would be surprised." . . .

(Page 99, Record)

"Q. In the rap session or when your people talk to these teenagers, do you initiate any discussion regarding parental attitude, regarding their parents' attitudes towards either contraception or their being sexually active?

A. That's one of the major topics, is discussing those kinds of things, talking about communications with parents. If the people at the rap session are having difficulty talking to their parents, the social worker would offer to help them in any way she could, including going to their home with the student and talking to them.

Q. And these matters are not just responded to but actually are brought up for discussion actively?

A. Oh, yes. That's pursued at great length.

Q. I'm talking about two distinct things here; one, birth control—

A. Um-hum.

Q. —and two, sexual activity.

A. Yes.

Q. Their sexual relations with a boy friend, date, whatever?

A. Um-hum.

Q. These are discussed?

A. Yes, Um-hum.

Q. And their parents' attitude towards these subjects are discussed?

A. Yes. And it is also discussed, can you talk to your parents about this, would you need help to talk to your parents, would you want to talk to your parents, could we help you.

. . .

Q. . . . My question was, would it be fair to say that from the responses that the kids give in the rap sessions, . . . That the majority of their parents don't know that they're sexually active, if they are, and that the majority of parents are believed by the teenagers to oppose their being sexually active?

A. . . . I think that would be the case for the people attending that night.

. . .

Appendix C

(Page 105, Record)

"Q. The parents of the . . . people who come to the rap sessions are not thereafter contacted by the clinic or by the Health Department?

A. No. These forms are a medical record and, therefore, are confidential information.

Q. It's strictly considered confidential between the individuals attending and the clinic. Are the minors who come to the clinic or come to the rap sessions asked if they have their parent's approval to participate in that program?

A. No. The question is not. (sic)

Q. If they come back for an appointment to receive a prescription for the pill or any other form of birth control, in the event that they are minors, are they asked if their parents—if they discussed this with their parents and if their parents approved?

. . .

A. That's not a regular question, no.

Q. The clinic does not consider that a relevant consideration at that point?

A. It's not a part of our guidelines.

Q. You are strictly following the guidelines of the State Health Department or the H.E.W., you're talking about?

A. Both.

. . .

(Page 116, Record)

"Q. Is there any discussion at these rap sessions regarding the morality, either from the point of view

of general code of conduct or religiously based ethics of sexual activity by unmarried teenagers?

A. I think they discuss their feelings, which involve a lot of the kinds of things you're talking about, their responsibility and the whole picture. I mean, the purpose of the rap session is to make them aware of these kinds of things.

Q. The answer is, yes, they do—there is discussion of the morality of the life sytle that is involved with teenage sexuality?

A. Their value systems, their responsibilities, if they are going to undertake this kind of decision, their feelings about it and so on. So there is a whole wide range of values being discussed here.

. . .

Q. In the course of these discussions, does the social worker then have to deal with the question of those teenagers who, from their family background, have scruples about being sexually active, that are thinking about it or involved in it and are looking for some counsel as to how to resolve these problems? Do you deal with that kind of situation?

A. Yes. We would be available for any student to come and talk to about this to try to work out some way of opening up communications with their parents and with any other person that might help them work out some communications with their parents. Some times that could be a brother or a sister, an older brother or sister or a minister or somebody like that . . . .

(Page 123, Record)

"Q. They are referred routinely to a rap session?

A. Yes.

Q. That's a pre-requisite to, let's say, having a physical and cervical examination and a prescription for the pill?

A. Yes. . . .

(Page 132, Record)

"Q. What happens at the rap session and the interviews that occur at the clinic then are the basis for a determination being made whether or not an individual is mature enough to be given this service without parental involvement?

A. The guidelines do not require parental involvement, so we're concerned about the patient's health.

Q. The guidelines then don't impose any formal requirement of making a determination of maturity level of the individual?

A. This is a public health clinic, a preventative health clinic, and that is our concern.

Q. I didn't understand that.

A. We're a health clinic, so we're concerned about health.

Q. Okay. To the best of your knowledge, the guidelines you follow then don't require any specific determination of maturity level of the girl?

A. No.

Q. If she is in good physical health, if she wants, let's say, the pill, if there are no counterindications that makes you suspicious of this person being mentally disturbed or something, that's enough to satisfy the requirements?

A. If her health is such that there are no counterindications, then she's served. . . .

Appendix C

(Defendants' Counsel, page 138, Record)

"Q. . . . Is it mandatory that minors attend a teen rap session before further birth control information or devices can be distributed to them?

A. Yes.

Q. How do you make sure that the teenagers do attend?

A. They are given a blue card and at the teen rap they're assigned a case number on that white form, Joint No. 1.

. . .

APPENDIX D

Deposition of Gerald Holzman, M.D., Member of Michigan State University Department acting as Medical Director of the Ingham (Tri-County Michigan) Family Planning Center, taken on November 4, 1975, and appearing in the Record of this matter below at pages 143 to 177.

The witness testified at page 147 of the Record below as follows:

(By Plaintiffs' Counsel):

"Q. . . . At the clinic, what is your role as a physician? Where do you come in?

A. I think the case in point would be the guidelines is to see policies. As far as seeing individual patients, if there are problems that arise and the staff of the clinic feels that it needs my expertise, then I'm available for them, but I do not see every patient that comes through there.

. . . .

(Page 153, Record)

"Q. My question is simply whether or not every girl who comes to the clinic and receives birth control devices or medication necessarily sees a physician during the course of it.

A. She does not. It is our judgment that she has adequate care.

. . . .

Q. When is it deemed necessary for a patient to see a doctor, under what circumstances?

A. I could list all the relative and the absolute contraindications for each device, which is, I believe, in part contained in the guidelines. It would

be best summarized when the individual seeing that patient deems it necessary that there is some deviation from normal and, therefore, they should get another opinion or an expert opinion.

Q. Would you give just a few examples of the contraindication that arise?

A. Question of thrombophlobitis, question of breast mass, question of diabetes, question of hypertension, question of infection.

. . .

Q. Do you have any rules that's followed with respect to a minimum age for prescription of the pill?

A. No. Well, I would back up on that. If the person is not menstruating yet, I would think that's the minimum age.

Q. The fact that she's menstruating?

A. Yes.

Q. No requirement that she has been menstruating for any specific period of time?

A. No.

. . .

Q. Now, do you make any kind of an evaluation of the level of understanding or maturity of the girl or woman who is there?

. . .

A. We've already established that, that the physician does not see every patient, so the obvious answer to that question is no. Does clinic personnel; yes, very definitely.

Q. . . . What steps do they take to ascertain the maturity level of the girl?

A. I'm sorry, I misunderstood your question then, because I thought you said understanding.

. . .

Q. Is there any kind of psychological testing administered to the minors to ascertain if they are sufficiently mature to make this judgment on their own to have birth control?

A. I wish you would suggest a psychological test. I don't know that one exists for that.

Q. You don't know of any psychological test that would ascertain the level of maturity?

A. Maturity, no, I don't.

Q. I guess your answer then is that, therefore, none are given?

A. None are given."